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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LOUIS LEPERA, an individual,

Plaintiff,

v.

UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA, a Political Subdivision
of Clark County,

Defendants.

CASE NO.: 2:22-cv-01699-RFB-BNW

**UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant University Medical Center of Southern Nevada ("UMC"), by and through the
law firm of Holley Driggs, ("Defendant"), hereby responds to Plaintiff's Complaint as follows:

PARTIES

1. Answering Paragraph 1 of the Complaint, UMC is without knowledge as to the
truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

2. Answering Paragraph 2 of the Complaint UMC admits that it is a county-owned
hospital created under NRS Chapter 450 and provides medical services to patients in Clark County,
Nevada.

3. Answering Paragraph 3 of the Complaint, the Paragraph asserts a legal conclusion
to which no response is necessary. To the extent a response is necessary, UMC denies the
Paragraph.

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1 4. Answering Paragraph 4 of the Complaint, the Paragraph asserts a legal conclusion
2 to which no response is necessary. To the extent a response is necessary, UMC denies the
3 Paragraph.

4 5. Answering Paragraph 5 of the Complaint, the Paragraph asserts a legal conclusion
5 to which no response is necessary. To the extent a response is necessary, UMC denies the
6 Paragraph.

7 6. Answering Paragraph 6 of the Complaint, UMC is without knowledge as to the
8 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

9 **JURISDICTION AND VENUE**

10 7. Answering Paragraph 7 of the Complaint, the Paragraph asserts a legal conclusion
11 to which no response is necessary. To the extent a response is necessary, UMC denies the
12 Paragraph.

13 8. Answering Paragraph 8 of the Complaint, the Paragraph asserts a legal conclusion
14 to which no response is necessary. To the extent a response is necessary, UMC denies the
15 Paragraph.

16 9. Answering Paragraph 9 of the Complaint, the Paragraph asserts a legal conclusion
17 to which no response is necessary. To the extent a response is necessary, UMC denies the
18 Paragraph.

19 **PROCEDURAL REQUIREMENTS**

20 10. Answering Paragraph 10 of the Complaint, the Paragraph asserts a legal conclusion
21 to which no response is necessary. To the extent a response is necessary, UMC denies the
22 Paragraph.

23 11. Answering Paragraph 11 of the Complaint, the Paragraph asserts a legal conclusion
24 to which no response is necessary. To the extent a response is necessary, UMC denies the
25 Paragraph.

26 12. Answering Paragraph 12 of the Complaint, UMC is without knowledge as to the
27 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

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FACTUAL ALLEGATIONS

13. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

14. Answering Paragraph 14 of the Complaint, UMC admits the allegations contained therein.

15. Answering Paragraph 15 of the Complaint, UMC admits the allegations contained therein.

16. Answering Paragraph 16 of the Complaint, UMC denies the allegations contained therein.

17. Answering Paragraph 17 of the Complaint, UMC denies the allegations contained therein.

18. Answering Paragraph 18 of the Complaint, UMC denies the allegations contained therein.

19. Answering Paragraph 19 of the Complaint, UMC denies the allegations contained therein.

20. Answering Paragraph 20 of the Complaint, UMC denies the allegations contained therein.

21. Answering Paragraph 21 of the Complaint, UMC denies the allegations contained therein.

22. Answering Paragraph 22 of the Complaint, UMC denies the allegations contained therein.

23. Answering Paragraph 23 of the Complaint, UMC denies the allegations contained therein.

24. Answering Paragraph 24 of the Complaint, UMC denies the allegations contained therein.

25. Answering Paragraph 25 of the Complaint, UMC denies the allegations contained therein.

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1 26. Answering Paragraph 26 of the Complaint, UMC denies the allegations contained
2 therein.

3 27. Answering Paragraph 27 of the Complaint, UMC denies the allegations contained
4 therein.

5 28. Answering Paragraph 28 of the Complaint, UMC denies the allegations contained
6 therein.

7 29. Answering Paragraph 29 of the Complaint, UMC denies the allegations as
8 characterized therein.

9 30. Answering Paragraph 30 of the Complaint, UMC denies the allegations as
10 characterized therein.

11 31. Answering Paragraph 31 of the Complaint, UMC denies the allegations as
12 characterized therein.

13 32. Answering Paragraph 32 of the Complaint, UMC denies the allegations contained
14 therein.

15 33. Answering Paragraph 33 of the Complaint, UMC admits the allegations contained
16 therein.

17 34. Answering Paragraph 34 of the Complaint, UMC admits the allegations contained
18 therein.

19 35. Answering Paragraph 35 of the Complaint, UMC is without knowledge as to the
20 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

21 36. Answering Paragraph 36 of the Complaint, UMC denies the allegations contained
22 therein.

23 37. Answering Paragraph 37 of the Complaint, UMC denies the allegations contained
24 therein as characterized by Plaintiff.

25 38. Answering Paragraph 38 of the Complaint, UMC denies the allegations contained
26 therein.

27 39. Answering Paragraph 39 of the Complaint, UMC is without knowledge as to the
28 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

1 40. Answering Paragraph 40 of the Complaint, UMC denies the allegations contained
2 therein.

3 41. Answering Paragraph 41 of the Complaint, UMC denies the allegations contained
4 therein.

5 **FIRST CLAIM FOR RELIEF**
6 **AGE DISCRIMINATION**
7 **29 U.S.C. §623 et. seq. / NRS 613.330**

8 42. UMC repeats and realleges all the allegations contained in the preceding paragraphs
9 of this Answer to Plaintiff's Complaint as though fully set forth herein.

10 43. Answering Paragraph 43 of the Complaint, UMC is without knowledge as to the
11 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

12 44. Answering Paragraph 44 of the Complaint, UMC denies the allegations contained
13 therein.

14 45. Answering Paragraph 45 of the Complaint, UMC denies the allegations contained
15 therein.

16 46. Answering Paragraph 46 of the Complaint, UMC denies the allegations contained
17 therein.

18 47. Answering Paragraph 47 of the Complaint, UMC denies the allegations contained
19 therein.

20 48. Answering Paragraph 48 of the Complaint, UMC denies the allegations contained
21 therein.

22 49. Answering Paragraph 49 of the Complaint, UMC denies the allegations contained
23 therein.

24 50. Answering Paragraph 50 of the Complaint, UMC denies the allegations contained
25 therein.

26 51. Answering Paragraph 51 of the Complaint, UMC denies the allegations contained
27 therein.

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52. Answering Paragraph 52 of the Complaint, UMC denies the allegations contained therein.

53. Answering Paragraph 53 of the Complaint, UMC denies the allegations contained therein.

SECOND CLAIM FOR RELIEF
DEFAMATION (PER SE)

54. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

55. Answering Paragraph 55 of the Complaint, UMC is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

56. Answering Paragraph 56 of the Complaint, UMC is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

57. Answering Paragraph 57 of the Complaint, UMC denies the allegations contained therein.

58. Answering Paragraph 58 of the Complaint, UMC denies the allegations contained therein.

59. Answering Paragraph 59 of the Complaint, UMC denies the allegations contained therein.

60. Answering Paragraph 60 of the Complaint, UMC denies the allegations contained therein.

61. Answering Paragraph 61 of the Complaint, UMC denies the allegations contained therein.

62. Answering Paragraph 62 of the Complaint, UMC denies the allegations contained therein.

THIRD CLAIM FOR RELIEF
DISABILITY DISCRIMINATION
42 U.S.C. §12111 et. seq. / NRS 613.330

63. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

64. UMC denies any allegations of disability discrimination.

FOURTH CLAIM FOR RELIEF
SEXUAL HARASSMENT/DISCRIMINATION
42 U.S.C. §2000e et seq. / NRS 613.330

65. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

66. UMC denies any allegations of sexual harassment/discrimination.

FOURTH CLAIM FOR RELIEF
RETALIATION
42 U.S.C. §2000e-3(a) Title VII / NRS 613.340

67. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

68. UMC denies any allegations of retaliation.

AFFIRMATIVE DEFENSES

1. UMC denies each and every allegation set forth in Plaintiff's Complaint not otherwise expressly denied herein;

2. The Complaint fails to state a claim against UMC upon which relief can be granted;

3. Plaintiff failed to exhaust all required administrative remedies prior to commencing this action;

4. Plaintiff is barred from obtaining relief against UMC for any claim by reason of the statute of limitations;

5. Plaintiff is, by his own actions, estopped from asserting any claim against UMC;

6. Plaintiff has, by his own actions, waived his right to assert any claim against UMC;

7. Plaintiff has not suffered any damages;

8. Plaintiff has not suffered any adverse employment action;

9. Plaintiff consented, in whole or in part, to any action taken by UMC;

10. Plaintiff failed to use reasonable care to avoid harm;

1 11. Plaintiff failed to report to UMC any prior alleged improper acts;

2 12. Plaintiff's damages, if any, are not attributable to any act, conduct, or omission of
3 UMC;

4 13. Plaintiff failed to take reasonable measures to mitigate his damages, if any, and is
5 therefore barred from recovering any damages from UMC;

6 14. Plaintiff's damages, if any, were the result of his own conduct;

7 15. Plaintiff's damages, if any, were caused by an intervening and/or superseding
8 cause;

9 16. Plaintiff's damages, if any, were caused by the actions or inactions of persons over
10 whom UMC either had no control or for whom UMC is not liable or responsible;

11 17. Plaintiff's damages, if any, were caused by the actions or inactions of persons acting
12 outside the scope of their employment with UMC;

13 18. Plaintiff's damages, if any, were contributed to or caused by Plaintiff's own actions
14 or inactions or those of a third party whose negligence was greater than UMC's negligence, if any;

15 19. Plaintiff's damages, if any, are not reflected by any physical manifestation of
16 symptoms;

17 20. Plaintiff's damages, if any, are capped by Nevada statute and/or other laws;

18 21. Plaintiff's claims may be barred by the doctrine of after-acquired evidence;

19 22. Plaintiff's claims are barred to the extent he failed to file an EEOC charge within
20 the requisite number of applicable days of any alleged discriminatory or retaliatory conduct;

21 23. Plaintiff's claims should be dismissed to the extent they were not set forth in his
22 administrative charge;

23 24. UMC is not a state actor as the same is understood and interpreted for purposes of
24 the statutes referenced in Plaintiff's Complaint;

25 25. UMC at all times acted in good faith and with reasonable grounds for believing it
26 did not violate any law;

27 26. UMC did not ratify or otherwise approve of any improper or illegal acts of any third
28 party;

1 27. All actions complained of by Plaintiff as related to UMC were taken consistent with
2 a business necessity and/or consistent with a bona fide occupational qualification;

3 28. All actions complained of by Plaintiff as related to UMC were taken consistent with
4 a bona fide seniority system;

5 29. UMC took all actions based upon reasonable and legitimate business considerations
6 other than the age of the employee;

7 30. UMC took all actions and set forth all policies reasonable and necessary to prevent
8 any improper acts by its employees conducted within the scope of their employment;

9 31. UMC has in place a company-mandated anti-discrimination policy that is
10 reasonably designed and reasonably effectual;

11 32. Plaintiff failed to take advantage of any preventative or corrective opportunities
12 provided by UMC;

13 33. UMC denies having any wrongful or discriminating motivation with respect to
14 Plaintiff, but asserts that the actions which Plaintiff complains of were taken for lawful reasons
15 independent of any alleged wrongful motivation;

16 34. UMC did not make any false or defamatory statements concerning Plaintiff's work
17 history;

18 35. Any statement made by UMC concerning Plaintiff's employment was true;

19 36. Any statement made by UMC concerning Plaintiff's employment history is
20 protected by the common interest privilege;

21 37. UMC is entitled to immunity pursuant to NRS 41.032;

22 38. UMC's damages, if any, are limited by NRS 41.035;

23 39. UMC is immune from punitive damages pursuant to NRS 42.005;

24 40. UMC's damages, if any, are limited by NRS 41.141;

25 41. UMC is entitled to qualified immunity;

26 42. Plaintiff's claims against UMC are barred in whole or in part by the doctrine of
27 unclean hands and/or laches;

28 43. Plaintiff's allegations are preempted by UMC's duties under federal and/or state

1 law;

2 44. All actions complained of by Plaintiff do not constitute legally cognizable adverse
3 employment actions;

4 45. It has been necessary for UMC to employ the services of an attorney to defend this
5 Complaint, and reasonable sums should be allowed as and for attorney fees, together with costs
6 expended in this action;

7 46. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, at the time of the filing
8 of this Answer to Plaintiff's Complaint, all possible affirmative defenses may not have been
9 alleged inasmuch as insufficient facts and relevant information may not have been available after
10 reasonable inquiry. Therefore, UMC reserves the right to amend this Answer to allege additional
11 affirmative defenses if subsequent investigation so warrants. UMC incorporates by reference each
12 and every affirmative defense set forth in Federal Rules of Civil Procedure Rule 8(c), as if fully
13 set forth herein. Such defenses are herein incorporated by reference for the specific purpose of not
14 waiving any such defense.

15 WHEREFORE, UMC prays for relief as follows:

- 16 1. Dismissal of Plaintiff's Complaint with prejudice;
- 17 2. An award of reasonable attorney fees and costs to UMC for the defense of this
18 matter; and
- 19 3. For such other relief as this Court deems reasonable and proper.

20 DATED this 20th day of December, 2022.

21 **HOLLEY DRIGGS**

22
23 /s/ F. Thomas Edwards

24 F. Thomas Edwards, Esq.

25 Nevada Bar No. 9549

26 John J. Pictum III, Esq.

27 Nevada Bar No. 15979

28 300 South Fourth Street, Suite 1600

Las Vegas, Nevada 89101

*Attorneys for University Medical Center
of Southern Nevada*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically transmitted the above and foregoing
**UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA'S ANSWER TO
PLAINTIFF'S COMPLAINT** using the CM/ECF system for filing and transmittal of a Notice
of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic
Filing.

Jeffrey Gronich, Esq.
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Attorney for Plaintiff, Louis Lepera

DATED this 20th day of December, 2022.

/s/ Norma S. Moseley
An employee of HOLLEY DRIGGS